

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of	)	
	)	
GTE CORPORATION and BELL	)	DOCKET NO. UT-981367
ATLANTIC CORPORATION	)	
	)	FOURTH SUPPLEMENTAL ORDER
for an Order Disclaiming Jurisdiction	)	APPROVING AND ADOPTING
or, in the Alternative, Approving the	)	SETTLEMENT AGREEMENT, GRANTING
GTE CORPORATION-BELL	)	APPLICATION, SUBJECT TO
ATLANTIC CORPORATION Merger.	)	CONDITIONS
.....	)	
WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION	)	
	)	DOCKET NO. UT-990672
Petitioner,	)	
	)	FOURTH SUPPLEMENTAL ORDER
v.	)	APPROVING AND ADOPTING
	)	SETTLEMENT AGREEMENT, GRANTING
GTE NORTHWEST	)	MOTION TO DISMISS WITH PREJUDICE,
INCORPORATED	)	SUBJECT TO REOPENING UNDER
	)	SPECIFIED CONDITIONS
Respondent.	)	
.....	)	
INFORMAL STAFF INVESTIGATION	)	
OF GTE NORTHWEST'S EARNINGS	)	DOCKET NO. UT-991164
AND REVENUE	)	
.....	)	

**PROCEEDINGS:** This Order resolves three separate dockets that proceeded individually prior to October 11, 1999. On that date, the statutory parties announced via a Request For Continuance in Docket No. UT-981367 their proposal to resolve all issues in the three dockets by means of an omnibus Settlement Agreement. Since that time, consistent with Commission notices dated October 14, 1999 (Docket No. UT-981367), and October 26, 1999 (Docket No. UT-990672), the formal dockets and the informal Staff investigation (Docket No. UT-991164) have proceeded on a common agenda. Applicants, Staff, and Public Counsel presented their proposed Settlement Agreement during a joint hearing conducted on November 22, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner

William R. Gillis, Administrative Law Judge Dennis J. Moss, and Administrative Law Judge Karen Caillé. The intervenors in Docket No. UT-981367 and Docket No. UT-990672 either support or do not oppose the Settlement Agreement.

Docket No. UT-981367 concerns a joint application by GTE Corporation and Bell Atlantic Corporation for an order disclaiming jurisdiction over, or, in the alternative, approving a proposed merger between the two corporations. The Commission held a prehearing conference in this matter on May 24, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge Dennis J. Moss. Pursuant to the procedural schedule, the parties filed testimony and exhibits in anticipation of resolution of the matter on a paper record supported by briefs scheduled for filing on September 3, 1999. The proceeding was continued by the Commission on several occasions to permit the parties to complete ongoing settlement negotiations. The omnibus settlement would resolve all issues in Docket No. UT-981367, except the fundamental question of whether the Commission has jurisdiction over the transaction.

Docket No. UT-990672 is a complaint proceeding commenced by the Commission's Complaint Alleging Unlawful Access Charges and Notice of Prehearing Conference, entered on May 6, 1999. The proceeding was commenced to enforce compliance with the Commission's rule on terminating access charges for telecommunication companies, WAC 480-120-540, and alleged, *inter alia*, that GTE Northwest, Inc.'s rates, charges, and practices violated RCW 80.36.186, RCW 80.36.170, RCW 80.36.080, 47 U.S.C. §254(b)(4), and 47 U.S.C. §254(f). Administrative Law Judge Karen Caillé conducted a prehearing conference at the Washington Utilities and Transportation Commission offices in Olympia, Washington on June 15, 1999. Pursuant to the procedural schedule, the parties filed testimony and exhibits in anticipation of resolution of the matter following formal evidentiary hearings scheduled for October 28 and 29, 1999. The proceeding was continued by the Commission on several occasions to permit the parties to complete ongoing settlement negotiations. The omnibus settlement would resolve all issues in Docket No. UT-990672.

Docket No. UT-991164 is an informal earnings-review investigation initiated by Commission Staff during May, 1999. Docket No. UT-991164 is not a formal adjudicatory proceeding at this time and there has been no formal process to date except in connection with the proposed omnibus settlement agreement. The omnibus settlement would resolve all potential issues arising from Staff's investigation in Docket No. UT-991164.

**PARTIES:** The following party representatives entered appearances in Docket No. UT-981367: Timothy J. O'Connell, Stoel Rives LLP, Seattle, Washington,

represents GTE Corporation; Richard Finnigan, attorney, Olympia, Washington, represents Bell Atlantic Corporation; Sally G. Johnston, Assistant Attorney General, Olympia, Washington, represents Commission Staff (Staff); Simon ffitich, Assistant Attorney General, Seattle, Washington, represents Public Counsel; Mary B. Tribby, attorney, AT&T Corporation, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc.; Eric S. Heath, attorney, Las Vegas, Nevada, represents Sprint Corporation.

The following party representatives entered appearances in Docket No. UT-990672: Judith Endejan, attorney, Seattle, Washington, represents GTE Northwest Incorporated (GTE Northwest). Shannon Smith, Assistant Attorney General, Olympia, Washington, represents Commission Staff (Staff). Richard A. Finnigan, attorney, Olympia, Washington, represents Washington Independent Telephone Association (WITA).

**COMMISSION:** The Commission has jurisdiction. The Commission approves the Settlement Agreement as a full and final resolution of the issues in these proceedings, adopts the Settlement Agreement and makes it part of this Order. The Commission authorizes and requires that the corporate parties to these proceedings that conduct jurisdictional activities in Washington State on behalf of GTE Corporation and/or Bell Atlantic Corporation make appropriate compliance filings to effectuate the terms of the Settlement Agreement.

## **MEMORANDUM**

### **I. Background and Procedural History.**

**A. Docket No. UT-981367.** GTE Corporation and Bell Atlantic Corporation entered into an Agreement and Plan of Merger as of July 27, 1998. The mechanics of the proposed merger are described in the companies' agreement as published to their respective shareholders in a Joint Proxy Statement dated April 13, 1999. The Joint Proxy Statement is included as an exhibit to the companies' application. The Agreement and Plan of Merger provides that Bell Atlantic Corporation will survive the transaction as "parent corporation" and GTE Corporation will survive as a subsidiary.

Applicants state that "[t]he merger will not occur until all necessary governmental and regulatory approvals and reviews have been obtained or completed." Application at 5. At the federal level, this includes review by the Department of Justice, which approved the merger on May 7, 1999. The Federal Communication Commission has not completed its review as of the date of this order. Various state regulatory

agencies also have undertaken review of the transaction; those processes are complete in some jurisdictions and continue in others.

On May 11, 1999, GTE Corporation and Bell Atlantic Corporation filed their Joint Application to initiate these formal proceedings. The Application asks the Commission to disclaim jurisdiction over the merger or, in the alternative, to approve it. The Commission conducted a prehearing conference on May 24, 1999. Applicants filed a Motion for Summary Determination and Brief in Support Thereof, and provided copies of their filing to the Bench during the prehearing conference. Among other things, Applicants' Motion for Summary Determination challenges the Commission's jurisdiction to review the proposed merger transaction. Staff, Public Counsel, and Sprint filed Responses on June 28, 1999, and Applicants replied on July 13, 1999. Applicants filed a supplemental brief citing new authorities arguably relevant to the Commission's consideration of the jurisdictional question on August 2, 1999. Staff and Public Counsel responded to the supplemental brief on August 12, 1999. The Commission elected to carry the Motion for Summary Determination with the case. These briefs and responses, except for Sprint's Response, which it withdrew on November 18, 1999, include thorough argument regarding the jurisdictional question we address below.

The parties filed various testimonies and exhibits in accordance with the procedural schedule, as modified from time-to-time in response to motions for continuance. On October 11, 1999, the statutory parties in Docket No. UT-981367 announced via a Request For Continuance their proposal to resolve the merger proceeding, and two other pending matters, by means of an omnibus Settlement Agreement. After October 11, 1999, consistent with Commission notices dated October 14, 1999 (Docket No. UT-981367), and October 26, 1999 (Docket No. UT-990672), the formal dockets and the informal Staff investigation (Docket No. UT-991164) proceeded on a common agenda. Applicants, Staff, and Public Counsel presented their proposed Settlement Agreement during a joint hearing conducted on November 22, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, Administrative Law Judge Dennis J. Moss, and Administrative Law Judge Karen Caillé. A revised Settlement Agreement was filed and presented as Exhibit No. 101 in Docket Nos. UT-981367 and UT-990672 on November 24, 1999, to clarify the substance and intent of the earlier submission. The intervenors in Docket No. UT-981367 and Docket No. UT-990672 either support or do not oppose the Settlement Agreement.

**B. Docket No. UT-990672.** The Commission entered its Complaint Alleging Unlawful Access Charges and Notice of Prehearing Conference in Docket No. UT-990672 on May 6, 1999. The proceeding was commenced to enforce compliance with the Commission's rule on terminating access charges for telecommunications

companies, WAC 480-120 (access charge reform rule). Administrative Law Judge Karen Caillé conducted a prehearing conference at the Washington Utilities and Transportation Commission offices in Olympia, Washington on June 15, 1999.

The parties filed testimonies and exhibits in accordance with the procedural schedule established at the prehearing conference. On October 22, 1999, Staff communicated by letter that the parties would be filing a joint motion for dismissal of the matter under the terms of a general settlement agreement between Commission Staff and GTE in Docket No. UT-981367. The parties requested cancellation of the evidentiary hearings set for October 28-29, 1999.

By notice dated October 26, 1999, the Administrative Law Judge canceled the evidentiary hearings and continued the proceedings consistent with the schedule established for the proposed settlement agreement in Docket No. UT-981367. On November 22, 1999, GTE and Staff filed Joint Motion to Dismiss With Prejudice, requesting termination of the proceedings consistent with the provisions of the omnibus Settlement Agreement.

**C. Docket No. UT-991164.** The Commission's regulatory staff commenced an informal earnings review investigation during May 1999. The matter was docketed on July 17, 1999, for administrative purposes. There has been no formal process concerning this docket, except in connection with the proposed omnibus settlement that is the subject of this Order.

## **II. Discussion and Decision.**

**A. Jurisdiction.** Although the proposed Settlement Agreement would resolve all substantive issues in the three dockets it concerns, the question of whether our statutes require us to review the merger (Docket No. UT-981367) remains for our decision. Indeed, the Settlement Agreement, attached as Appendix "A" to this Order, includes the following disclaimer at pages 1-2:

GTE and Bell Atlantic specifically disclaim that the Commission has jurisdiction to review and approve the GTE-Bell Atlantic merger; Staff and Public Counsel specifically assert that the Commission has jurisdiction to review and approve the GTE-Bell Atlantic merger.

The question of the Commission's jurisdiction was briefed thoroughly by the parties and the matter is ripe for determination.

The Commission concludes that the proposed merger transaction is jurisdictional. RCW 80.12.020 requires GTE Corporation, which conducts business in Washington through its wholly owned operating subsidiary GTE-Northwest, to obtain our approval for the disposition of GTE-Northwest's properties or facilities that are necessary and useful in the performance of its duties to the public. Pursuant to WAC 480-143-170, we are required to examine the Application and accompanying exhibits, and we may enter into a hearing concerning the Application, which we have done in this proceeding. Following our review, we must determine whether "the proposed transaction is not consistent with the public interest," and, if the transaction is not consistent with the public interest, we must deny the application.

**1. Essential Facts.** GTE Corporation is a holding company, incorporated in New York. Its principal offices are located in Irving, Texas. GTE Corporation, through numerous subsidiaries, provides telecommunications services in various states. In Washington State, GTE Corporation provides regulated local telecommunications services through its wholly owned subsidiary, GTE Northwest. GTE Northwest's accounting, support, and administrative functions are conducted and maintained at GTE Corporation headquarters in Irving, Texas, and in other GTE corporate offices throughout the United States. These functions are essential to GTE Northwest's regulated operations in Washington State. Disposition of the entirety of GTE Northwest's property and facilities necessary or useful to its performance of its public duties in Washington State is a matter wholly within the control of GTE Corporation. In connection with GTE Corporation's activities that are part of GTE Northwest's operations in Washington State, including decisions reserved to the parent under the company's corporate structure, we find that the activities, decisions, and acts of the parent necessarily are the activities, decisions, and acts of the subsidiary.

Bell Atlantic Corporation is a holding company, incorporated in Delaware with principal offices in New York, New York. Bell Atlantic Corporation conducts business in Washington State through two wholly owned subsidiaries, Bell Atlantic Communications, Inc. and NYNEX Long Distance Company d/b/a Bell Atlantic Long Distance. Bell Atlantic Corporation provides only resold toll service in Washington State and does not offer local telephone service options to Washington consumers.

On July 27, 1998, GTE Corporation and Bell Atlantic Corporation signed an agreement to merge. The merger will be accomplished by creating a new corporation, Beta Gamma Corporation, which will be 100 percent owned by Bell Atlantic Corporation. Beta Gamma Corporation will acquire 100 percent of GTE Corporation's stock and the two entities then will merge, with GTE Corporation becoming the surviving company. GTE Corporation thus will become a wholly owned subsidiary of Bell Atlantic Corporation. Each GTE Corporation shareholder will receive 1.22 shares

of Bell Atlantic Corporation stock for each share of GTE Corporation stock, and GTE Corporation's shares will be retired.

As a result of the transaction, GTE Northwest will become a wholly owned subsidiary of Bell Atlantic Corporation, albeit one step removed by the corporate structure described above. Thus, although Applicants state that "there is no current intent to change the structure of GTE Northwest Incorporated," Bell Atlantic Corporation will have the power to effect fundamental changes in GTE Northwest's organization and operations in Washington State if the merger is consummated. Applicants state, for example, that "the precise nature of how the accounting, support and other administrative functions will be performed for GTE Northwest after the merger is, as yet, undecided." It is apparent, then, that the merger will affect directly GTE Northwest's operations in Washington State, even though the precise nature of those effects is uncertain. In this Order, we find that the decision by GTE Corporation to transfer control of itself to Bell Atlantic Corporation's newly constituted Board of Directors is tantamount to a decision by GTE Northwest to "otherwise dispose of the whole . . . of its properties [and] facilities . . . necessary or useful to its performance of its duties to the public" in Washington State. RCW 80.12.020.

**2. Governing Statutes and Rules.** The Washington Legislature delegates broad authority to the Commission to regulate public utilities, including telecommunications companies. RCW 80.01.040 establishes the Commission's general powers and duties, in relevant part, as follows:

The utilities and transportation commission shall:

- (1) Exercise all the powers and perform all the duties prescribed therefor by this Title . . .
- (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, . . . , telecommunications companies . . .
- (4) Make such rules and regulations as may be necessary to carry out its powers and duties.

Among the public service laws are statutes that prohibit transfers of property by regulated companies unless approved in advance by the Commission. Chapter 80.12 RCW provides with respect to transfers of property:

80.12.020. Order required to sell, merge, etc.

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do . . .

RCW 80.12.030 says any such sale or other disposition made without the Commission's authorization is void.

"Public Service Company" is defined by RCW 80.12.010 to mean:

every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of [Title 80].

Further, RCW 80.04.010 provides that the term

"[p]ublic service company" includes every . . .  
telecommunications company . . .

Finally, RCW 80.04.010 also provides that

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

WAC 480-143-170 establishes the standard by which we review applications filed pursuant to Chapter 80.12 RCW. The rule states that

If, upon examination of any application and accompanying exhibits, or upon a hearing concerning the same, the



commission finds that the proposed transaction is not consistent with the public interest, it shall deny the same.

This rule, and the statutes cited above, reflect in part the Washington Supreme Court's observation that the Commission "is charged with administering pervasive regulatory schemes that affect almost every phase of activity of the businesses under its authority." *Tanner Electric Corp. v. Puget Sound Power & Light*, 128 Wn.2d 656, 682, 911 P.2d 1301 (1996).

**3. Arguments Opposing Jurisdiction.** Applicants acknowledge that the fundamental delegation of power to the Commission to regulate the practices of telecommunications companies in Washington State is included in RCW 80.01.040. Motion for Summary Determination at 6. However, they assert that Chapter 80.12 RCW strictly limits the Commission's jurisdiction to review corporate transactions such as the GTE-Bell Atlantic merger." *Id.* They argue that the Commission's authority over mergers is "narrowly defined in Chapter 80.12 RCW." *Id.*

Applicants argue that the Commission should focus exclusively on the corporate parents as the entities formally effecting the subject transaction without considering the identity between parent and subsidiary as described above. In their view, it is not relevant that GTE Corporation and GTE Northwest are functionally intertwined for purposes of GTE Northwest's operations and activities in Washington State, or that, insofar as the merger is concerned, only the parent can act for subsidiary. Applicants argue that although GTE Northwest indisputably is a public service company GTE Corporation considered in isolation is not a public service company under RCW 80.12.010. Since Chapter 80.12 concerns activities by one or more public service companies, Applicants argue that our review of the transaction is not required under RCW 80.12.020, or other sections of Chapter 80.12 RCW.

Although Applicants develop arguments concerning all three potential bases for the exercise of our jurisdiction under Chapter 80.12 RCW—the so-called Disposition Clause (RCW 80.12.020), Consolidation Clause (RCW 80.12.020), and Acquisition Clause (RCW 80.12.040)—we find it necessary to consider only the Disposition Clause to conclude the statute requires our review and approval of the proposed transaction. To reiterate, the relevant statutory language states:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, . . . , without having secured from the commission an order authorizing it so to do . . . .

RCW 80.12.020. Applicants argue with respect to the Disposition Clause that we lack jurisdiction not only because GTE Corporation is not a public service company, but also because dispositions effected by transfers of stock are not covered under this section of the statute. Moreover, Applicants argue that because the transfer of control over GTE Northwest's properties and facilities is indirect, there is no "disposition" at all.

More generally, Applicants argue that Commission precedent establishes that GTE Corporation is not subject to Chapter 80.12 RCW. In this connection, they contend our prior approval of certain intracompany stock transactions involving GTE Corporation and GTE Northwest under the securities statute, Chapter 80.08 RCW, is tantamount to a determination by the Commission that Chapter 80.12 RCW does not apply here.

Applicants argue that our recent decision on jurisdiction in the merger between PacifiCorp and ScottishPower "is distinguishable on its face." *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, 192 PUR4th 143 (March 1999). Applicants argue that the corporate structures before and after the merger in that case are different from the corporate structures before and after the proposed GTE-Bell Atlantic merger, and that these differences make application of the *PacifiCorp/ScottishPower* analysis and decision to the present case inappropriate. Among other things, Applicants assert that their proposed transaction, unlike the *PacifiCorp/ScottishPower* merger, is structurally similar to one undertaken in 1949 as to which the Washington Attorney General issued an opinion letter concluding the proposed transaction between stockholders was not within the scope of Chapter 80.12 RCW. Applicants argue, therefore, that we should find the Attorney General's 1949 opinion persuasive, if not controlling, despite our rejection of that argument in the earlier case. Applicants argue by supplemental brief that certain decisions by the Indiana Supreme Court, reversing the determination by that state's Utility Regulatory Commission that it is required to review the GTE - Bell Atlantic merger, are directly on-point and should govern our analysis here.

#### **4. Arguments Supporting Jurisdiction.**

**a. Staff.** Staff disputes the Applicants' assertions that the Commission's authority under RCW 80.01.040 is "limited" or "narrowly defined" by Chapter 80.12.RCW. Staff cites *Tanner Elec. Coop. V. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 911 P.2d 1301 (1996), and the Commission's recent order concerning jurisdiction in the *PacifiCorp/Scottish Power* proceeding as reaffirming the Commission's "broad regulatory authority" generally, and under Chapter 80.12 RCW particularly. Staff Memorandum at 5.

Staff argues that it does not matter whether GTE Corporation and Bell Atlantic Corporation, considered in isolation, are public service companies. Staff contends that the Commission should find “that a transfer of control of a corporate parent (GTE) constitutes a disposition of the subsidiary operating company’s (GTE-NW’s) ‘franchises, properties or facilities’ under 80.12.020.” Because GTE Northwest indisputably is a public service company, the Commission has jurisdiction over the transaction, according to Staff’s analysis.

Staff analogizes to the *PacifiCorp/Scottish Power* case which it contends is closely similar to the present case in that both involve indirect transfers of control over assets used to provide utility services in Washington State; both cases involve stock transactions and hierarchical corporate structures. Staff observes that “ultimate control of GTE-NW will lie with Bell Atlantic.” Staff Memorandum at 10. Staff argues that GTE Northwest depends on its parent corporation’s decisions in this regard, because GTE Northwest “cannot dispose of control on its own.” Staff Memorandum at 10. Therefore, Staff reasons, the Commission should not treat the matter here differently from the transaction in *PacifiCorp/Scottish Power* simply because the companies here have elected to structure themselves in multiple corporate layers. Staff argues “the Commission here should focus not on the form, but rather on the substance of the corporate transaction,” as it did in *PacifiCorp/Scottish Power*. Staff quotes the Commission’s decision in that case as follows:

We perceive the legislative purpose in this connection to be that the Commission should carry out its mission to protect the public interest whenever the control of a plainly jurisdictional public utility changes through a corporate transaction for the transfer of the whole or a controlling interest in the company.

Staff Memorandum at 11 (quoting *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, mimeo at 9, 192 PUR4th 143 (March 1999)).

Responding to Applicants’ supplemental brief, Staff notes that decisions by the Indiana Supreme Court are not precedential. Nor, Staff argues, are these particular decisions even persuasive, given that the Commission previously observed in the *PacifiCorp/ScottishPower* case that “the Indiana statute at issue [is] too different from our own to inform our decision.” Staff Response to Brief on New Authorities at 3 (quoting *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, mimeo at 13, 192 PUR4th 143 (March 1999)). Staff argues, in addition, that the legislative history of the Indiana

statute that is central to the Indiana Supreme Court's analysis, is not present in the case of the Washington statute.

**b. Public Counsel.** Public Counsel argues that the Commission has jurisdiction under the Disposition Clause of RCW 80.12.020, and cites in support of its arguments the same authorities on which Staff relies. Public Counsel focuses on GTE Northwest as a public service company that "may not dispose of any part of its property 'necessary or useful in the performance of its duties to the public' without Commission approval." Public Counsel Answer at 3. Public Counsel points out that the "otherwise dispose of" language in the Disposition Clause is broad and encompasses "any type of disposition, however structured." *Id.*

Public Counsel argues that the practical effect of the proposed transaction is to transfer ownership and control of GTE Northwest to Bell Atlantic Corporation, thus bringing the transaction squarely within the controlling principles discussed in the *PacifiCorp/Scottish Power* jurisdictional order. Public Counsel describes the intertwined operations among the various corporate levels as shown by Applicants' filing, and emphasizes that the decision-makers that ultimately determine and control GTE Northwest's provision of services to the public will change as a result of the merger.

Public Counsel disputes Applicant's argument that the present case can be distinguished from the *PacifiCorp/Scottish Power* case by virtue of the holding company structure here, as opposed to a corporate hierarchy with fewer tiers in the earlier case. Public Counsel argues the Commission rejected "a rigid and mechanistic reading of the statute [as one that] creates a situation in which some transactions receive review, while other, functionally identical ones do not." Public Counsel Answer at 6-7.

Public Counsel argues that the form of the transaction—a stock transfer—has no bearing on the jurisdictional question. Public Counsel concludes this argument with another quote from our order in *PacifiCorp/Scottish Power* where we said:

Considering the fundamental requirement that the Commission regulate in the public interest—that is, protect the public from harm—it is inconceivable that the Legislature meant to include within the Commission's jurisdiction scrutiny of the complete transfer of control over the operations of a jurisdictional electric company achieved by means of an asset sale, yet exclude a functionally identical

transfer of control achieved by means of an exchange of stock.

Public Counsel Answer at 6-7 (quoting *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, mimeo at 10, 192 PUR4th 143 (March 1999)).

Public Counsel's response to Applicants' supplemental brief mirrors Staff's. Public Counsel relates that we found in the *PacifiCorp/ScottishPower* case that the absence from the Indiana statute of the broad, inclusive "otherwise dispose of" language in our statute is a material difference between the two enactments. Thus, Public Counsel asserts, arguments that stem from the Indiana statute simply are not helpful.

**5. Commission Analysis and Decision Regarding Jurisdiction.** The Commission's jurisdiction resides generally in the Legislature's delegation of power under RCW 80.01.040. Subsection (3) of that statute provides:

The utilities and transportation commission shall [r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, . . . telecommunications companies . . .

RCW 80.01.040 expresses the Legislature's intent that the Commission should exercise broad authority to regulate the practices of public utilities. *Tanner Electric Corp. v. Puget Sound Power & Light*, 128 Wn.2d 656, 666, 911 P.2d 1301 (1996).

We agree with Applicants that the Commission's statutory authority "only permits the Commission to undertake those actions authorized expressly or by necessary implication." Motion for Summary Determination at 6-7 (citing *Washington independent Telephone Association v. TRACER*, 75 Wn.App. 356, 880 P.2d 50 (1994)). We also agree that "the Commission's jurisdiction may not rest upon simple appeals to the 'public interest' requirements of RCW 80.01.040(3)." Motion for Summary Determination at 7 (citing *Cole v. WUTC*, 79 Wn.2d 302, 306, 45 P.2d 71 (1971)). Chapter 80.12 RCW, however, is among "the public service laws" to which RCW 80.01.040 refers. It is the Legislature's meaning and intent in enacting that statute within the context of our overall regulatory scheme that concerns us now. We must answer the question whether Chapter 80.12 RCW expressly or impliedly requires us to review the subject transaction to protect the public interest consistent with the

requirements of RCW 80.01.040(3). Answering that question we follow, and borrow liberally from, our recent analysis of this legal issue in the *PacifiCorp/ScottishPower* case. We conclude the present transaction is subject to our jurisdiction and requires our review and approval. See, *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, 192 PUR4th 143 (March 1999).

Chapter 80.12 RCW is a set of prohibitions and penalties binding on public service companies. Specifically, the chapter prohibits certain transactions by public service companies without the Commission's authorization, and provides that failure to secure that authorization voids the transaction. There is no conflict between RCW 80.01.040 and Chapter 80.12 RCW. Rather, the two provisions must be read harmoniously together considering and giving full effect to the Legislature's purpose. *King County v. Central Puget Sound Growth Management Hearings Board*, 91 Wn.App. 1, 16 (Division One, 1998) citing *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 459, 819 P.2d 56 (1994). Applicants do not expressly argue that the statute is ambiguous. However, to the extent that their interpretation is considered reasonable, it suggests an ambiguity in the statute. In that regard, we are mindful that when we construe these statutes "the spirit and intent of the statute should prevail over the literal letter of the law and . . . there should be made that interpretation which best advances the perceived legislative purpose." *Dumas v. Gagner*, 137 Wn.2d 268, 286 (1999) (quoting *Wichert v. Cardwell*, 117 Wn.2d 148, 151, 812 P.2d 858 (1991)). We perceive the legislative meaning and purpose in this connection to be that the Commission should carry out its mission to protect the public interest whenever the control of a plainly jurisdictional public utility changes through a corporate transaction for the transfer of the whole or a controlling interest in the company.

Central to our determination of the jurisdictional issue is the expansive language the Legislature chose for the first clause of RCW 80.12.020:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, . . .

We consider the ordinary meaning of these terms and see at once the statute encompasses transfers of title (*i.e.*, sales), transfers of rights to possess (*i.e.*, leases), and transfers of any designated right or set of rights (*i.e.*, assignments) parties may wish to carve out. Most significantly, we consider the phrase "dispose of" and find it defined to mean, among other things, "to pass into the control of someone else."

Black's Law Dictionary 471 (6<sup>th</sup> ed. 1990).<sup>1</sup> The second part of the clause uses equally broad language, bringing within the sweep of RCW 80.12.020 transfers of rights or control over all, or any part of, a public service company's "franchises, properties[,] or facilities whatsoever," qualified only by the requirement that they be "necessary or useful" to the company's public duties as a utility. Thus, the statute requires Commission approval not just for some narrow class of transactions, but for any transfer of rights or control over anything necessary or useful to a public service company's utility operations.

Our reading of RCW 80.12.020, as applied to the facts pertinent here, gives effect to both the broad purposes set forth in RCW 80.01.040 and the specific purpose of RCW 80.12.020. Public service companies provide essential services to our citizens: telecommunication, electricity, gas, and water. That is why their "rates, services, facilities, and practices" must be regulated in "the public interest." RCW 80.01.040 (3). That public interest is at stake when a public service company disposes of part or all of itself (if the part or whole being disposed of is necessary or useful in the performance of the company's duties). The specific purpose of RCW 80.12.020 is to ensure that the public interest is protected by requiring the Commission's approval of the transaction that achieves the disposition.

In contrast, the interpretation urged by Applicants is inconsistent with both the terms and meaning of RCW 80.01.040 and RCW 80.12.020. We do not believe that the Legislature meant under RCW 80.12.020 to allow companies to avoid scrutiny of transfers of control over their jurisdictional enterprises by the simple expedients of erecting particular corporate structures or using stock rather than cash as consideration. Such a rigid and mechanistic reading of the statute, as we observe in our recent order in the *PacifiCorp/ScottishPower* merger case, "is counter-intuitive in this context and would subvert the purposes underlying the Commission's delegated powers." *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, mimeo at 10, 192 PUR4th 143 (March 1999). Indeed, it strains credulity to suggest that the Legislature intended that functionally identical transactions should be treated differently simply because one transaction involves entities that have erected a hierarchical corporate structure including holding companies while the other transaction involves similar entities that rely on more simple corporate structures. In this case, GTE Northwest is a wholly owned subsidiary of GTE Corporation. There is perfect identity between the corporations for purposes of a decision to effect a complete transfer of control such as would result under the subject

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<sup>1</sup> *State v. Chester*, 133 Wn.2d 15, 22, \_\_\_ P.2d \_\_\_ (1997) (absent statutory definition, words are given common law, or ordinary meaning); *State v. Fjermsestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990) (nontechnical words given dictionary definition).

transaction. Indeed, as Public Counsel points out, wholly owned subsidiaries (*e.g.*, GTE Northwest) of major international telecommunications companies “do not merge independently of their parent corporation.” Public Counsel Answer at 5. In like vein, Staff points out that “GTE-NW cannot dispose of control on its own; it is dependent on its parent to accomplish that end.” Staff Memorandum at 10.

We agree with Staff and Public Counsel that the focus of our inquiry in this proceeding should be on GTE Northwest, indisputably a public service company under RCW 80.04.010 and RCW 80.12.010. In taking that focus, we cannot ignore GTE Corporation’s exclusive power, as the parent corporation, to effect the disposition of the whole of GTE Northwest by an indirect transfer of control to the newly constituted Board of Directors and officers of Bell Atlantic Corporation. To that extent, a decision by GTE Corporation’s Board of Directors to transfer control of GTE Corporation and its wholly owned subsidiaries is just as effectively a decision by the subsidiaries, including GTE Northwest, to dispose of the whole of the public service company within the meaning of the Disposition Clause in RCW 80.12.020. Similarly, we cannot ignore the integral role of GTE Corporation both in the day-to-day operations of GTE Northwest and in shaping the corporate strategy that will determine larger concerns such as investment in Washington State, service offerings, and other matters that impact Washington consumers very directly. After the merger, Bell Atlantic Corporation will assume these roles for GTE Northwest. To the extent of this direct involvement by the parent corporation in the operations and decisions of the subsidiary, there is such identity of action and purpose that the two corporate entities should be considered a single entity subject to our statutes governing the conduct of public service companies as defined for purposes of Chapter 80.12. RCW.

Thus, we reject Applicants’ primary line of argument. We find that, with respect to the act of “disposing” of control over a public utility, the act of the parent corporation is the act of the subsidiary where the parent has exclusive authority to undertake the act. We also find identity between the parent and subsidiary corporations, to the extent of shared operations and decisions that affect directly the provision of services to customers in Washington State. In effect, we pierce the corporate veil and conclude that GTE Corporation and GTE Northwest are a single telecommunications company falling within the definition of “public service company” for purposes of considering a transaction that involves the disposition of the whole of GTE Northwest’s property and facilities used to provide regulated telecommunications services in Washington State.

We turn next to Applicants’ arguments concerning Washington authorities and authorities from other jurisdictions that are asserted to be on point, or at least persuasive. Applicants argument that “[t]he Commission already has concluded in its formal orders that it lacks jurisdiction under RCW 80.12.020 or 80.12.040 to



regulate transactions of GTE Corporation” (Motion for Summary Determination at 13) is misplaced. In the case Applicants cite, *In the Matter of Application of GTE Northwest Incorporated*, Docket No. UT-930748, the Commission considered under Chapter 80.08 RCW (Securities) and authorized the sale of \$38 million of GTE Northwest common stock to GTE Corporation. Since GTE Corporation already owned GTE Northwest at the time, the transaction did not involve a disposition and thus was not subject to the Disposition Clause in RCW 80.12.020. Insofar as the Acquisition Clause in RCW 80.12.040 is concerned, the requirement for Commission approval of stock or securities transactions applies only to acquisitions by one public service company of *another* public service company’s stock or securities. To the extent GTE Corporation is a public service company, it is so by virtue of its ownership, operation, and management of GTE Northwest. As simply another level in the GTE corporate hierarchy, GTE Corporation would be part of a single public service company that includes GTE Northwest, not a separate public service company. Thus, the transaction at issue in the proceeding Applicants cite to us involved no more than one public service company, not two public service companies. It follows that our approval under RCW 80.12.040 was not required in that instance; we properly exercised our authority over the stock transfer under Chapter 80.08 RCW.

We are unpersuaded by Applicants’ argument that their transaction, unlike the transaction we analyzed recently in the *PacifiCorp/Scottish Power* proceeding, falls squarely within the rationale of a 1949 Attorney General’s opinion regarding the scope of Chapter 80.12 RCW. The Attorney General’s opinion concerned the sale of shares in a closely held telephone company. As we discussed in our order on jurisdiction in *PacifiCorp/Scottish Power*, the critically salient fact related by the Attorney General was that “the sales involve *only* acts by stockholders disposing of their interest in the public service corporation, and do not involve any action by the public service company . . .” *In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, mimeo at 11, 192 PUR4th 143 (March 1999). In sharp contrast here, as in *PacifiCorp/Scottish Power*, the critical acts upon which the present transaction depends are those of the respective Boards of Directors of GTE Corporation and Bell Atlantic Corporation who conceived this transaction, negotiated its terms, reduced those terms to writing, and put the whole matter before their respective shareholders for majority approval with a recommendation for that approval. GTE Northwest’s only shareholder is its corporate parent; GTE Northwest’s approval, if required at all, is a mere formality. The disposition of GTE Northwest via the subject transaction is not even arguably an act by GTE Northwest’s shareholder *qua* shareholder.

Finally, we consider authorities from other jurisdictions. Applicants, in their Supplemental Brief on New Authorities, urge us to review certain statutes and cases from Indiana. We note at the outset that we examined the relevant

Indiana statute in *PacifiCorp/Scottish Power* and found it too different from our own to inform our decision. In particular, we found that the Indiana statute does not use the encompassing “otherwise dispose of” language found in RCW 80.12.020.

Another significant difference between the Indiana statute examined by that state’s Supreme Court in *Indiana Bell Telephone Company v. Indiana Utility Regulatory Comm’n*, Cause No. 93S02-9906-EX-350, and our statute is their respective historical contexts. According to the Indiana Supreme Court, the Indiana “statute has been on the books since 1913.” Mimeo Op. at 11. According to the Court’s analysis, the Indiana General Assembly recognized early on that the definition of “public utility” in the relevant statute did not encompass holding companies. Three efforts to change the statute to expand the definition failed; the final effort being in 1931. The Court goes on to relate that in 1933 the statute “was amended to give the Indiana Commission power to investigate a public utility’s affiliates . . .” *Id.* at 12-13.

We express no opinion on the Indiana Court’s view that “this addition [in 1933] must be viewed as a compromise that brought holding companies under limited scrutiny . . .” *Id.* at 13. But we do note that this last legislative change occurred in 1933, two years before the Federal Power Act and the Federal Public Utility Holding Company Act became available as model legislation for states that thereafter might enact statutes regulating activities of public utilities. The Federal Acts are significant in that they were, in part, a response to “[a]buse of holding company structures [that] was rampant in the twenties and thirties,” as noted by the Indiana Supreme Court. *Id.* at 12 (footnote omitted). Certainly, state legislative bodies also were cognizant of such abuses.

Chapter 80.12 RCW became law in 1941. By then, the Federal laws were available to state legislatures as models. Although the legislative history that led to enactment of Chapter 80.12 RCW is too scant to permit us to determine confidently that the chapter was based directly on the corresponding federal law, the similarity in the language of the two statutes is striking. Indeed, we find the key operative language of Federal Power Act Section 203(a), 16 U.S.C. § 824b(a) virtually identical to the corresponding language in RCW 80.12.020. The federal statute says, in pertinent part:

No public utility *shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof* of a value in excess of \$50,000 . . . without first having secured an order of the Commission authorizing it to do so. . . . After notice and an opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will

be consistent with the public interest, it shall approve the same.

RCW 80.12.020 says, in relevant part:

No public service company *shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever*, which are necessary or useful in the performance of its duties to the public, . . . without having secured from the commission authorizing it so to do.

Given this striking similarity between the two enactments, it seems beyond reasonable dispute that our statute is based in significant part on the earlier federal legislation that addresses the same subject matter and regulatory concerns. Even were that not true, in the absence of Washington State judicial precedent or definitive legislative history to the contrary, we view the FERC's interpretation of Federal Power Act Section 203 (a), as providing valuable guidance to the meaning of RCW 80.12.020.

The Commission's discussion of this point in the *PacifiCorp/ScottishPower* case applies equally here:

In *Central Vermont Public Service Corporation*, 39 FERC ¶61,295, 84 P.U.R. 4<sup>th</sup> 213, 1987 FERC LEXIS 1842 (1987), FERC concludes that a transfer of ownership and control from existing shareholders in a public utility company to a newly created holding company effectuated by converting the shareholders' public utility company shares into holding company shares "constitutes a disposition of jurisdictional facilities requiring prior [FERC] approval under section 203." The [FERC] Order goes on to say:

After the reorganization the jurisdictional facilities of the public utility will be controlled through the parent's ownership of the utility's common stock by virtue of the parent's ability to name Central Vermont's board of directors. Although the current stockholders of the public utility will own stock in the holding company after the reorganization is completed, they will no longer have a proprietary interest in, or direct control over, the jurisdictional facilities. The substance of the transaction, therefore, is a "disposition" of facilities via the transfer of all direct control. This analysis is consistent with our prior determinations to focus on the substance rather than the form

of corporate transactions and relationships when making jurisdictional determinations. [citations omitted].

FERC consistently has held that it has jurisdiction under Federal Power Act Section 203(a) over transactions in which corporate ownership and control over a jurisdictional utility is transferred by an exchange of stock similar, or identical in material respects, to the proposed transaction between [GTE Corporation and Bell Atlantic Corporation]. *Central Hudson Gas & Electric Corporation*, 84 FERC ¶62,010, 1998 FERC LEXIS 1303 (1998); *Consolidated Edison Company of New York, Inc.*, 81 FERC ¶62,070, 1997 FERC LEXIS 2231 (1997); *Tucson Electric Power Company*, 80 FERC ¶62,275, 1997 FERC LEXIS 2013 (1997).

*In the Matter of the Application of PacifiCorp and Scottish Power PLC*, Docket No. UE-981672, Second Supp. Order, mimeo at 14-15, 192 PUR4th 143 (March 1999).

We, too, determine that the Commission's focus should be on the substance and not the form of transactions that transfer control of a jurisdictional public service company's "properties or facilities . . . , which are necessary or useful in the performance of its duties to the public." RCW 80.12.010. We turn now to consideration of the omnibus settlement by which we are asked, among other things, to approve the merger of GTE Corporation and Bell Atlantic Corporation subject to the terms and conditions of the Settlement Agreement.

### **III. Omnibus Settlement**

GTE Corporation, GTE Northwest Incorporated, Bell Atlantic Corporation, the Public Counsel Section of the Attorney General of Washington, and the Regulatory Staff of the Washington Utilities and Transportation Commission filed a proposed Settlement Agreement on November 8, 1999, to resolve three pending matters:

1. *In re Application of GTE CORPORATION and BELL ATLANTIC CORPORATION for an Order Disclaiming Jurisdiction, or in the Alternative, Approving the GTE CORPORATION-BELL ATLANTIC CORPORATION Merger*, Docket No. UT-981367 ("Merger Case");
2. *Washington Utilities and Transportation Commission v. GTE Northwest Incorporated*, Docket No. UT-990672 ("Access Charge Complaint Case"); and
3. A regulatory review of the earnings of GTE Northwest, as reflected in the testimony of Kathleen M. Folsom, filed in Docket No. UT-981367. Exh. T-30 at . The earnings review bears informal docket number UT-991164 ("Earnings Review").

The parties ask the Commission to approve and adopt their Settlement Agreement by which they would resolve all substantive issues raised by the pending proceedings identified above. The Intervenor in the two formal adjudicatory proceedings either support or do not oppose the Settlement Agreement.

The Commission convened hearing proceedings on November 22, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, Administrative Law Judge Dennis J. Moss, and Administrative Law Judge Karen Caillé to receive the Settlement Agreement as an exhibit, and to build a formal record in Docket Nos. UT-981367 and UT-990672. The original Settlement Agreement was received as Exhibit No. 100 in both dockets. In addition, various prefiled testimonies and exhibits were marked and accepted into the record by stipulation in each docket. Based on inquiry and discussion among the parties and the Bench, the signatory parties to the Settlement Agreement agreed to submit a revised Settlement Agreement to include clarifying, but not substantive, changes. The revised Settlement Agreement was filed on November 24, 1999, and was accepted into evidence under reserved Exhibit No. 101. The revised Settlement Agreement, which is attached as Appendix "A," is the subject of our discussion below.

#### **A. Summary of Settlement Terms.**

The key elements of the Settlement Agreement are as follows:

- The pending proceedings will be terminated. In the Access Charge Complaint Case, the Commission is asked to grant a Joint Motion To Dismiss With Prejudice, filed by GTE Northwest and Staff on November 22, 1999. In the Merger Case, the Commission is asked to grant a Joint Motion for Approval of the GTE Corporation - Bell Atlantic Corporation Merger Based On Settlement and Conditions Contained Therein, filed by Applicants, Public Counsel, and Staff on November 8, 1999. In respect to the informal earnings review, the Commission is asked to find and conclude that the Settlement Agreement establishes rates charged and overall earnings of GTE Northwest that are fair, just, reasonable, and sufficient through the period ending July 1, 2002.
- GTE Northwest will reduce rates for regulated services in the state of Washington in four phases to achieve a \$30,000,000 net annual revenue reduction by July 1, 2001, as follows:

First phase rate adjustments to net an annual revenue reduction of \$7,000,000 no later than May 1, 2000;

Second phase rate adjustments to net an annual revenue reduction of \$8,000,000 no later than July 1, 2000;

Third phase rate adjustments to net an annual revenue reduction of \$8,000,000 no later than January 1, 2001;

Fourth phase rate adjustments to net an annual revenue reduction of \$7,000,000 no later than July 1, 2001.

Specific rate reductions to achieve these results are identified in the Settlement Agreement and reflected in "Exhibit A" to the Settlement Agreement. First phase adjustments would reduce GTE Northwest's terminating access charges by \$10,500,000 and increase GTE Northwest's originating access charges by \$3,500,000. The terminating access rate reductions will be applied in the interim universal service support element, as specified in WAC 480-120-540. No one is foreclosed from claiming a different level of universal service support in any future proceeding. GTE Northwest will use its business judgment to choose specific originating access rates and rate elements to be changed, subject to applicable law and challenge from any party.

If petitioners, including GTE Northwest, prevail in their appeal of the Commission's Order implementing the current version of WAC 480-120-540, now pending as *WITA et al. v. WUTC*, Thurston County Superior Court Cause No. 98-2-02413-2, GTE Northwest's access rate tariff will revert to the *status quo ante* tariff rates and the phase one adjustments will be applied against those rates to achieve the same overall net revenue reduction.

The first phase rate reductions and increases are to resolve all issues raised in the Access Charge Complaint Case.

- Until July 1, 2002, Staff, Public Counsel, and the Commission will refrain from initiating, and will not support a third-party request to initiate, any complaint proceeding regarding the overall revenue or earnings level of GTE Northwest. Until July 1, 2002, the Commission will refrain from acts, other than acts to implement the Settlement Agreement rate changes, that would change the retail prices or access rates of GTE Northwest, subject to certain exceptions. GTE Northwest may apply for voluntary rate reductions during this period.

The exceptions are that Staff and Public Counsel may seek, at any time, rate changes to: (a) implement a state or federal program of universal service support, or similar program; (b) effect revenue-neutral rate rebalancing; (c) adjust revenues for changes in reciprocal compensation; or (d) adjust revenues for changes in mandated costs.

- Until July 1, 2002, GTE Northwest will refrain from seeking any regulated rate or charge to Washington customers, except GTE Northwest may seek to raise rates: (a) if part of a state or federal program of universal service support or similar program; (b) if part of an overall program of revenue neutral or revenue negative rate rebalancing; (c) in response to increases in reciprocal compensation expense arising under interconnection agreements negotiated under the Telecommunications Act of 1996, or similar proceedings or agreements; (d) to recover unfunded mandates imposed by federal, state, or local governments; or (e) in circumstances involving individual or minor rate adjustments made by GTE Northwest in the normal operation of its business (including, without limitation, individual case basis contracts, new service offerings, and price-listed services). Staff and Public Counsel may contest the merits of any rate proposal initiated by GTE Northwest.
- GTE Northwest commits additionally to: (a) utilize operations support systems ("OSS") consistent with all requirements of law; (b) maintain or improve current levels (measured and reported monthly against a baseline determined from the most recent twelve months) of consumer complaints, held orders, and installation appointments met, for the performance and installation of GTE Northwest's traditional regulated services; (c) bring all exchanges in Washington into compliance with WAC 480-120-525(e) within six months of the closing of the GTE-Bell Atlantic merger; (d) present to the Commission and Public Counsel within thirty days of discovering any failure to meet the commitments in items (b) or (c), above, an action plan to remedy the situation; (e) meet annually with the Commissioners, Staff, and Public Counsel to review the prior year's network capital investment and deployment of new services, and preview planned network capital investment; (f) continue to meet its obligations under items (d) and (e), above, through June 30, 2002, except that any party to the Settlement Agreement may request the Commission to require continuing compliance for a longer period.

By accepting these additional commitments by GTE Northwest, Staff and Public Counsel expressly do not waive any generally applicable rights they may have to pursue penalties under Washington law.

- GTE/Bell Atlantic commit additionally to: (a) compete through designated corporate affiliates or subsidiaries in the provision of local telephone services in the Seattle metropolitan area within eighteen months after closing their merger agreement, subject to exercise by the merged company of its business judgment considering economic factors germane in a competitive environment; (b) evaluate and report to Staff and Public Counsel within twenty-four months after closing their merger, whether to offer local telephone service to residential and/or small business customers in the Seattle metropolitan area.

If the merger is terminated prior to the implementation of the first phase rate and revenue adjustment (*i.e.*, before May 1, 2000), the Commission will permit reopening of the Access Charge Complaint Case. If the merger is terminated after that date, the Commission will not permit the Access Charge Complaint Case to be reopened.

If the merger is terminated prior to the implementation of the third phase rate and revenue adjustment (*i.e.*, before January 1, 2001), the Commission will permit reopening of the Earnings Review. If the merger is terminated after that date, the Commission will not permit the Earnings Review to be reopened.

**B. Commission Discussion and Decision Regarding Omnibus Settlement Agreement.** The Commission has considered the Settlement Agreement in light of the evidentiary records developed in Docket Nos. UT-981367 and UT-990672, and the transcript of proceedings, including testimony by witnesses for the statutory parties concerning the possible settlement of those dockets and informal Docket No. UT-991134. Based on the record developed in Docket No. UT-981367, we find the merger transaction consistent with the public interest. Considering both risks and benefits, we find that customers will not be harmed. Rather, the terms of the Settlement Agreement provide Washington customers benefits unlikely to occur as quickly, if at all, in the absence of the transaction.

Based on the record developed in, and otherwise pertaining to, Docket No. UT-990672, we find the issues pending in the Access Charge Complaint Case are adequately addressed and resolved by the terms of the Settlement Agreement. In particular, we find that a net reduction of \$7,000,000 in access charges, including a \$10,500,000 reduction in terminating access charges and a \$3,500,000 increase in originating access charges, results in a level of terminating access charges that is consistent with WAC 480-120-540, and that the charges are just, reasonable, and compensatory.

We also find that the Settlement Agreement brings Staff's informal earnings review process to a satisfactory conclusion. The net reduction in revenue and



commensurate rate adjustments that are provided by the Settlement Agreement will produce immediate rate relief for Washington consumers.

The parties diligent work to resolve the issues presented under these three dockets produced an omnibus Settlement Agreement that ultimately satisfied all parties to the formal proceedings and all participants in the informal process. This makes our task an easy one. Testimony from various witnesses, and certain representations by counsel confirm that all parties are satisfied after detailed study and analysis that the merger is in the public interest, and that the agreed adjustments to revenues produce fair, just, and compensatory rates and charges for terminating access and other services. Under the circumstances we are well-satisfied that the Settlement Agreement should be approved and adopted as a full and final resolution of all issues pending in the three dockets affected.

### **FINDINGS OF FACT**

Having discussed above in detail all matters material to our decision, and having stated findings and conclusions upon contested issues, the Commission now makes the following summary findings of fact. Those portions of the preceding detailed findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, property transfers, and mergers of public service companies, including telecommunications companies.

2. GTE Northwest Incorporated, a wholly owned subsidiary of GTE Corporation, is engaged in the business of furnishing telecommunications services within Washington State as a public service company.

3. GTE Corporation is a holding company, incorporated in New York. Its principal offices are located in Irving, Texas. GTE Corporation provides regulated telecommunications services in Washington State through its wholly owned subsidiary, GTE Northwest Incorporated ("GTE Northwest"). GTE Northwest's accounting, support, and administrative functions are conducted and maintained at GTE Corporation headquarters in Irving, Texas, and in other GTE corporate offices throughout the United States. These functions are essential to GTE Northwest's regulated operations in Washington State. Disposition of the entirety of GTE Northwest's property and facilities necessary or useful to its performance of its public duties in Washington State is a matter wholly within the control of GTE Corporation. In connection with GTE Corporation's activities that are part of GTE Northwest's

operations in Washington State, including decisions reserved to the parent under the company's corporate structure, the activities, decisions, and acts of the parent necessarily are the activities, decisions, and acts of the subsidiary.

4. On May 11, 1999, GTE Corporation and Bell Atlantic Corporation jointly applied for an order from the Commission disclaiming jurisdiction over their proposed merger transaction or, in the alternative, approving the GTE Corporation - Bell Atlantic Corporation merger.

5. The proposed merger transaction is to be effected through an exchange of stock. Under the terms of the Applicants' merger agreement, Bell Atlantic Corporation will survive as the parent corporation and GTE Corporation will be a wholly owned subsidiary of Bell Atlantic Corporation. GTE Northwest will become a second-tier wholly owned subsidiary of Bell Atlantic Corporation.

6. On November 8, 1999, the Applicants, Commission Staff, and Public Counsel jointly filed their Settlement Agreement (Exhibit No. 100). These parties filed an amended and restated Settlement Agreement (Exhibit No. 101) on November 24, 1999. The Settlement Agreement would resolve all pending substantive issues in Docket Nos. UT-981367, UT-990672, and UT-991164. The intervenor parties in each docket either support or do not oppose the Settlement Agreement.

7. The prefiled testimonies and exhibits, along with the transcripts of proceedings in Docket Nos. UT-981367 and UT-990672, comprise a stipulated record for purposes of the Commission's consideration of the Settlement Agreement.

8. Considering the record concerning the proposed merger in light of the Settlement Agreement, including evidence offered by witnesses who appeared and supported the Settlement Agreement via live testimony, and the fact that no party opposes the Settlement Agreement, the Commission finds the proposed merger transaction is consistent with the public interest.

9. Considering the record concerning access charges in light of the Settlement Agreement, including the evidence offered by witnesses who appeared and supported the Settlement Agreement via live testimony, and the fact that no party opposes the Settlement Agreement, the Commission finds the proposed adjustments to revenues produces charges for terminating access that are just, reasonable, compensatory, and neither unduly preferential nor discriminatory.

## **CONCLUSIONS OF LAW**

Having discussed above in detail all matters material to our decision, and having stated findings and conclusions upon contested issues, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. Title 80 RCW.

2. The merger transaction, subject to the requirements stated in the Settlement Agreement, which is attached to this Order as Appendix "A" and adopted by reference into the body of this Order, is consistent with the public interest. WAC 480-143-170. The parties' Joint Motion for Approval of the GTE Corporation - Bell Atlantic Corporation Merger Based on Settlement and Conditions Contained Therein should be approved.

3. The Settlement Agreement fully and fairly resolves the issues pending in Docket No. UT-990672 (Access Charge Complaint Case), and is in the public interest. The parties' Joint Motion To Dismiss With Prejudice should be granted subject to the reopening conditions described in the body of the Settlement Agreement.

4. The rates, charges, and revenues produced under the terms of the Settlement Agreement are just, reasonable, and sufficient. RCW 80.28.020.

5. The rates, charges, and revenues produced under the terms of the Settlement Agreement are neither unjustly discriminatory nor unduly preferential, and do not violate any provisions of law. RCW 80.28.020.

6. The Commission retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

### **ORDER**

THE COMMISSION ORDERS That the Settlement Agreement attached to this Order as Appendix 1, is approved and adopted as part of this Order as if set forth fully in the body of this Order.

THE COMMISSION ORDERS FURTHER That the Joint Motion To Dismiss With Prejudice *Washington Utilities and Transportation Commission v. GTE Northwest Incorporated* (Access Charge Complaint Case), Docket No. UT-990672, is granted, subject to Section II.H.1. of the Settlement Agreement, which allows the Access Charge Complaint Case to be reopened if Applicants' merger agreement is terminated, unconsummated, before May 1, 2000.

THE COMMISSION ORDERS FURTHER That the Joint Motion for Approval of the GTE Corporation - Bell Atlantic Corporation Merger Based On Settlement and Conditions Contained Therein, is granted subject to the conditions imposed under the Settlement Agreement.

DATED at Olympia, Washington, and effective this     day of  
December, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

**NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**

**APPENDIX A**  
**SETTLEMENT AGREEMENT**